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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013 - 314*

13 **CAREY MARGARET MARTIN, AKA**
14 **CAREY MARTIN**
15 **783 Teresita Blvd**
16 **San Francisco, CA 94127**

A C C U S A T I O N

17 **Registered Nurse License No. 548904**

18 **Nurse Practitioner Certificate No. 14485**

19 **Nurse Furnisher Certificate No. 14485**

20 **Respondent.**

21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
25 Consumer Affairs.

26 2. On or about October 14, 1998, the Board of Registered Nursing issued Registered
27 Nurse License Number 548904 to Carey Margaret Martin, also known as Carey Martin
28 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
the charges brought in this Accusation and will expire on June 30, 2014, unless renewed.

3. On or about September 03, 2003, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 14485 to Respondent. The Registered Nurse Certificate was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on June 30, 2014, unless renewed.

4. On or about June 23, 2004, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 14485 to Respondent. The Registered Nurse Certificate was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on June 30, 2014, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

8. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

9. Code section 2761 states, in part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

• • •

1 (d) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violating of, or conspiring to violate any provision or term of this chapter
3 [the Nursing Practice Act] or regulations adopted pursuant to it.

4 10. Code section 2762 states, in part:

5 In addition to other acts constituting unprofessional conduct within the meaning
6 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
7 licensed under this chapter to do any of the following:

8 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
9 a licensed physician and surgeon, dentist, or podiatrist administer to himself or
10 herself, or furnish or administer to another, any controlled substance as defined in
11 Division 10 (commencing with Section 11000) of the Health and Safety Code or any
12 dangerous drug or dangerous device as defined in Section 4022.

13 11. Codes Section 2836.1 provides, in part:

14 Neither this chapter nor any other provision of law shall be construed to
15 prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of
16 the following apply:

17 ...

18 (g)(1) The board has certified in accordance with Section 2836.3 that the nurse
19 practitioner has satisfactorily completed (1) at least six month's physician and
20 surgeon-supervised experience in the furnishing or ordering of drugs or devices and
21 (2) a course in pharmacology covering the drugs or devices to be furnished or ordered
22 under this section.

23 (2) Nurse practitioners who are certified by the board and hold an active
24 furnishing number, who are authorized through standardized procedures or protocols
25 to furnish Schedule II controlled substances, and who are registered with the United
26 States Drug Enforcement Administration, shall complete, as part of their continuing
27 education requirements, a course including Schedule II controlled substances based
28 on the standards developed by the board. The board shall establish the requirements
for satisfactory completion of this subdivision.

(h) Use of the term "furnishing" in this section, in health facilities defined in
Section 1250 of the Health and Safety Code, shall include (1) the ordering of a drug
or device in accordance with the standardized procedure and (2) transmitting an order
of a supervising physician and surgeon.

(i) "Drug order" or "order" for purposes of this section means an order for
medication which is dispensed to or for an ultimate user, issued by a nurse
practitioner as an individual practitioner, within the meaning of Section 1306.02 of
Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of
law, (1) a drug order issued pursuant to this section shall be treated in the same

manner as a prescription of the supervising physician; (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by nurse practitioners; and (3) the signature of a nurse practitioner on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

12. Codes Section 2836.2 provides:

Furnishing or ordering of drugs or devices by nurse practitioners is defined to mean the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure. All nurse practitioners who are authorized pursuant to Section 2831.1 to furnish or issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration.

13. Codes Section 2836.3 provides:

(a) The furnishing of drugs or devices by nurse practitioners is conditional on issuance by the board of a number to the nurse applicant who has successfully completed the requirements of subdivision (g) of Section 2836.1. The number shall be included on all transmittals of orders for drugs or devices by the nurse practitioner. The board shall make the list of numbers issued available to the Board of Pharmacy. The board may charge the applicant a fee to cover all necessary costs to implement this section.

(b) The number shall be renewable at the time of the applicant's registered nurse license renewal.

(c) The board may revoke, suspend, or deny issuance of the numbers for incompetence or gross negligence in the performance of functions specified in Sections 2836.1 and 2836.2.

14. Code section 4022 provides:

"Dangerous drug" . . . means any drug or device unsafe for self use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

1 15. Code section 4059, subdivision (a), provides, in part, that "[n]o person
2 shall furnish any dangerous drug, except upon the prescription of a physician . . ."

3 16. Code section 4060 provides, in part that "[n]o person shall possess any
4 controlled substance, except that furnished to a person upon the prescription of a
5 physician . . ."

6
7 17. Health and Safety Code section 11173, subdivision (a), provides:

8 No person shall obtain or attempt to obtain controlled substances, or procure or
9 attempt to procure the administration of or prescription for controlled substances, (1)
10 by fraud, deceit, misrepresentation, or subterfuge; or (2) by concealment of a material
11 fact.

12 REGULATORY PROVISIONS

13 18. California Code of Regulations, title 16, section 1442, states:

14 As used in Section 2761 of the code, 'gross negligence' includes an extreme
15 departure from the standard of care which, under similar circumstances, would have
16 ordinarily been exercised by a competent registered nurse. Such an extreme departure
17 means the repeated failure to provide nursing care as required or failure to provide
18 care or to exercise ordinary precaution in a single situation which the nurse knew, or
19 should have known, could have jeopardized the client's health or life.

20 COST RECOVERY

21 19. Code section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 DRUGS

26 20. Adderall is the trade name for dextroamphetamine sulfate and is a stimulant. It is a
27 Schedule II controlled substance as designated by Health and Safety Code section 11055,
28 subdivision (d)(1), and a dangerous drug as designated by Code section 4022.

1 21. Morphine sulfate is a Schedule II controlled substance pursuant to Health and Safety
2 Code section 11055, subdivision (b)(1)(L), and a dangerous drug as designated by Code section
3 4022.

4 22. Oxycontin is the trade name for oxycodone hydrochloride and is a semisynthetic
5 narcotic analgesic with multiple actions qualitatively similar to those of morphine. It is a
6 Schedule II controlled substance as defined by Health and Safety Code section 11055,
7 subdivision (b)(1)(M), and a dangerous drug as designated by Code section 4022.
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9 23. Ritalin is the trade name for methylphenidate hydrochloride and is a mild central
10 nervous system stimulant. It is a Schedule II controlled substance as defined in Health and Safety
11 Code section 11055, subdivision (d)(6), and a dangerous drug as designated by section 4022.
12

13 **FACTUAL STATEMENT**

14 24. On or about January 13, 2010, the United States Drug Enforcement Agency issued to
15 Respondent a registration permitting her to prescribe Schedule III through V controlled
16 substances¹. The registration is valid until January 31, 2013. During the dates referenced in
17 paragraph 26, below, Respondent was not authorized to prescribe Schedule II² controlled
18 substances.
19

20 25. For an unknown period of time but during the dates referenced in paragraph 26 and
21 its subparts, below, Respondent worked as a registered nurse at the Harm Reduction Therapy
22 Center and South of Market Mental Health Services in San Francisco, California.
23
24

25 ¹ Schedule controlled substances are defined by Code of Federal Regulations, title 21,
26 part 1300, et seq., and Health and Safety Code section 11000, et seq.

27 ² Schedule II controlled substances have a high potential for abuse that may lead to severe
28 psychological or physical dependence.

26. During the course and scope of her employment with Harm Reduction Therapy Center and South of Market Mental Health Services, Respondent committed the following acts:

A. On or about May 19, 2010, Respondent wrote and signed a prescription to Patient SH³ for 60 tablets of Ritalin 20 mg.

B. On or about June 4, 2010, Respondent wrote and signed a prescription to Patient JO for 60 tablets of Oxycontin 80 mg.

C. On or about September 14, 2010, Respondent wrote and signed a prescription to Patient JV for 120 tablets of Oxycontin 40 mg.

D. On or about June 8, 2010, Respondent wrote and signed a prescription to Patient NB for 60 tablets of Adderall XR 25 mg.

E. On or about February 15, 2011, Respondent wrote and signed a prescription to Patient NB for 60 tablets of Adderall 10 mg.

F. On or about April 11, 2011, Respondent wrote and signed a prescription to Patient NB for 60 tablets of Adderall XR 20 mg.

G. On or about June 8, 2011, Respondent wrote and signed a prescription to Patient NB for 60 tablets of Adderall XR 40 mg.

H. On or about August 5, 2010, Respondent wrote and signed a prescription to Patient JO for 60 tablets of Oxycontin 80 mg.

I. On or about September 1, 2010, Respondent wrote and signed a prescription to Patient JO for 60 tablets of Oxycontin 80 mg.

J. On or about June 21, 2010, Respondent wrote and signed a prescription to Patient PC for 60 tablets of Oxycontin 80 mg.

³ All patients are identified by initials in order to preserve patient confidentiality. The medical record numbers of these patients will be disclosed pursuant to a request for discovery.

1 K. On or about July 1, 2010, Respondent wrote and signed a prescription to Patient PC
2 for 60 tablets of Oxycontin 80 mg.

3 L. On or about September 2, 2010, Respondent wrote and signed a prescription to
4 Patient PC for 60 tablets of Oxycontin 80 mg.

5 M. On or about January 12, 2011, Respondent wrote and signed a prescription to Patient
6 LR for 60 tablets of Adderall 30 mg.

7 N. On or about April 5, 2011, Respondent wrote and signed a prescription to Patient LC
8 for 60 tablets of Adderall 30 mg.

9 O. On or about May 17, 2011, Respondent wrote and signed a prescription to Patient LC
10 for 90 tablets of Adderall 30 mg.

11 P. On or about July 30, 2011, Respondent wrote and signed a prescription to Patient LC
12 for 60 tablets of Adderall XR 30 mg.

13 Q. On or about September 28, 2011, Respondent wrote and signed a prescription to
14 Patient LC for 60 tablets of Adderall XR 30 mg.

15 R. On or about November 30, 2011, Respondent wrote and signed a prescription to
16 Patient LC for 60 tablets of Adderall XR 30 mg.

17 S. On or about November 30, 2011, Respondent wrote and signed a prescription to
18 Patient BM for 30 tablets of Adderall XR 30 mg.

19 T. On or about November 30, 2011, Respondent wrote and signed a prescription to
20 Patient BM for 30 tablets of Adderall 10 mg.

21 U. On or about December 24, 2011, Respondent wrote and signed a prescription to
22 Patient BM for 30 tablets of Adderall XR 30 mg.

23 V. On or about December 24, 2011, Respondent wrote and signed a prescription to
24 Patient BM for 30 tablets of Adderall 10 mg.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence)

27. Respondent has subjected her registered nursing license, nurse practitioner certificate, and nurse furnisher certificate to discipline under Code section 2761, subdivision (a)(1), for unprofessional conduct, as defined by California Code of Regulations, title 16, section 1442, in that while employed as a registered nurse, she committed acts of gross negligence in carrying out her usual certified or licensed nursing functions. Specifically, Respondent was grossly negligent in furnishing Schedule II controlled substances without the required permit, as more particularly set forth in paragraph 26 and its sub-parts, above.

SECOND CAUSE FOR DISCIPLINE

(Furnished Controlled Substances or Dangerous Drugs)

28. Respondent has subjected her registered nursing license, nurse practitioner certificate, and nurse furnisher certificate to discipline under Code section 2761, subdivision (a), for unprofessional conduct, as defined by Code section 2762, subdivision (a), in that she furnished controlled substances and dangerous drugs by fraud, deceit, misrepresentation, subterfuge, and/or by the concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), as more particularly set forth in paragraph 26 and its subparts, above.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence in Furnishing Controlled Substances without Permits)

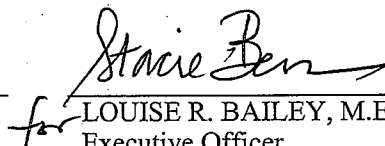
29. Respondent has subjected her registered nursing license, nurse practitioner certificate, and nurse furnisher certificate to discipline under Code sections 2836.1, subdivision (g)(2), 2836.2, and 2836.3 in that she was grossly negligent in furnishing Schedule II controlled substances without the required permit, as more particularly set forth in paragraph 26 and its subparts, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 548904, Nurse Practitioner Certificate No. 14485, and Nurse Furnisher Certificate No. 14485, issued to Carey Margaret Martin, also known as Carey Martin;
2. Ordering Carey Margaret Martin, also known as Carey Martin, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: October 24, 2012


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2012900911/ accusation.rtf